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The Dayton Coal and Iron Co., (Limited)

vs.

T. A. Barton.

184

IN ERROR TO THE SUPREME COURT OF TENNESSEE.

BRIEF FOR DEFENDANT IN ERROR.

BENJ. GORDEN McKENZIE,
Attorney.

Supreme Court of the United States.

The Dayton Coal and Iron Co., (Limited)

VS.

T. A. Barton.

IN ERROR TO THE SUPREME COURT OF TENNESSEE.

BRIEF AND REPLY FOR THE DEFENDANT IN ERROR.

This cause originated before a magistrate for Rhea County, Tennessee, being a suit under Chapter 11, Acts of the Tennessee Legislature, 1899, to recover the cash on Fifty Dollars ($50) in puncnout or scrip issued by plaintiff in error and of which defendant was and is the bona fide holder and owner, which was issued after the passage of said Act. Defendant was successful in the courts below, including the Supreme Court of Tennessee, and plaintiff in error brought this cause to this Honorable Court, etc.

The only contention of plaintiff in error is that said Act is unconstitutional, because repugnant to Section 1 of the 14th Amendment to the Constitution of the United States. Said Section reads as follows: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

"Due process of law," and the law of the land mean one and the same thing.

Davidson vs. New Orleans, 96 U. S., 101.

Then it necessarily follows, if this Act is Constitutional, that is the law of the land and by it within proper and reasonable limits business and property rights can be regulated.

Holden vs. Hardy, 169, U. S., 392.

The Act in question reads as follows:

"AN ACT requiring all persons, firms, corporations, and companies using coupons, scrip, punchouts, store orders, or other evidences of indebtedness to pay laborers and employees for labor, or otherwise to redeem the same in good and lawful money of the United States in the hands of their employees, laborers, or a *bona fide* holder, and to provide a legal remedy for collecting the same in favor of said laborers, employees and such *bona fide* holder.

"Section 1. Be it enacted by the General Assembly of the State of Tennessee, That all persons, firms, corporations and companies, using coupons, scrip, punchouts, store orders, or other evidences of indebtedness to pay their or its laborers and employees, for labor or otherwise, shall, if demanded, redeem the same in the hands of such laborer, employee or *bona fide* holder, in lawful money of the United States; *Provided*, The same is presented and redemption demanded of such person, firm, corporation or company using same as aforesaid, at a regular pay-day of such person, firm, company or corporation to laborers or employees, or if presented and redemption demanded as aforesaid by such laborers, employees, or *bona fide* holder at any time not less than thirty days from the issuance or delivery of such coupon, scrip, punchout, store order or other evidence of indebtedness to such employees, laborers or *bona fide* holder. Such redemption to be at the face value of said scrip, punchout, coupon, store order or other evidence of indebtedness; *Provided*, further, Said face value shall be in cash the same as its purchasing power in goods, wares and merchandise at the commissary, company store or other repository of such company, firm, person or corporation aforesaid.

"Sec. 2. Be it further enacted, That any employee, laborers or *bona fide* holder referred to in Section 1 of this Act, upon presentation and demand for redemption of such scrip, coupon, punchout, store order or other evidence of indebtedness aforesaid, and upon refusal of such person, firm, corporation or company to redeem the same in good and lawful money of the United States, may maintain in his, her or their own name an action before any court of competent jurisdiction against such person, firm, corporation or company, using same as aforesaid, for the recovery of the value of such coupon, scrip, punchout, store order or other evidence of indebtedness, as defined in Section 1 of this Act.

Sec. 3. Be it further enacted, That nothing herein in this Act contained is to be construed as to legalize the issuance or use of scrip. That all laws in conflict with this Act be and the same are hereby repealed.

"Sec. 4. Be it further enacted, That this Act take effect from and after its passage, the public welfare requiring it.

"Passed March 17, 1899.

"Signed," etc

Approved by the Governor March 23, 1899.

The authorities cited and relied on by plaintiff in error are cases chiefly

where the Acts in question were declared unconstitutional on account of arbitrary class legislation, and the others are entitled to little or no weight in this Honorable Court since the case of Holden vs. Hardy, reported in 169, U S. 392 In that case the Supreme Court of the United States held that a Statute of Utah, making eight hours labor constitute a day's work, a proper exorcise of the police power of the State and hence constitutional.

See also Common Wealth vs. Alger, 7 Cush. 53.84.

The Act in question is general in its application and hence no objection can be brought for class legislation, as it applies to every person, natural or artificial. Such laws have been repeatedly upheld as a proper exercise of the the police power of the State. In Tennessee an Act regulating fire insurance contracts and making the three-fourths value clause void was upheld as proper and constitutional.

95 Tenn 245, case Dugger vs. Insurance Co.

Also Tennessee Supreme Court held that an ordinance, prohibiting the erection of wooden buildings within certain fire limits, was not, in a constitutional sense, an impairment of a contract for erection of the same, although the contract was made before the passage of the ordinance.

Knoxville vs. Bird, 12 Lea 121-4.

Also the same Court held in Truss vs. State that a law prohibiting the sale of cotton within certain hours was constitutional and a proper exercise of the police power of the State.

97 Tenn . 311.

A West Virginia Statute similar to the Statute in question in many particulars was sustained and upheld by the Supreme Court of that State.

Peel Splint Coal Co. vs. West Virginia, 17 L. R. A. 385

An Act of the State of Indiana requiring bi-weekly payments of wages, was upheld as proper by the Supreme Court of that State.

Hancock vs. Yaden, 6. L. R. A , 576.

The Supreme Courts of Massachusetts, Rhode Island, Kentucky and many other States have sustained similar and even more drastic laws for the regulation of business and contracts growing out of same.

State vs. Manufacturing Co., 17 L. R. A., 856; Shaffer vs. Manufacturing Co., 55 Md., 28 L. R. A., 344.

The evils of the scrip system has long been felt and it has become a tool in the hands of great concerns with which to oppress the weak. The tendency of this law is to protect the weak against the strong, to give the laborer his just and full pay for his day's labor and, by making his punchouts, which he is compelled to accept, between regular pay-days, in order

to live, worth par value, and then he only gets the amount of the original contract for which he agreed to labor instead of scrip and trade, wherever he pleases and exercise the right of a free American citizen. As it has existed, laborers were compelled to trade at the company store or commissary of these concerns and pay long profits and thus labor was unjustly defrauded. This Act justly regulates business, is not arbitrary, its tendency is to promote peace and prevent blood shed and strikes. It is certainly a proper law, at least under the police power of the State. The evils of this kind of business even existed back in the days of William the Fourth, and to remedy this evil the TRUCK ACT was passed and upheld. 17 L. R. A., 395. This evil has grown in this country until many States have passed laws regulating the same. This cause and the cause of the Knoxville Iron Co. vs. Harbison, both pending in this Honorable Court, involve the same question, to-wit: the constitutionality of Acts of the Tennessee Legislature of 1899, Chapter 11, and the Supreme Court of Tennessee, in each of said causes, having held the Act constitutional in able opinions, said opinions are here referred to and made a part of this brief.

See Record in this Cause p. 41. Also Harbinson vs. Knoxville Iron Co., 103 Tenn,, 421.

Every intendment is in favor of the Constitutionality of the Act and the presumption is that the Legislature acted properly.

Munn vs Illinois, 94 U. S., 113.

All contracts and property rights are subject to the police power of the State. Duggar vs. Insurance Co., 95 Tenn., 245; Marr vs. Bank of West Tennessee, 4th Lea, 585; Knoxville vs. Bird, 12 Lea, 121; New York vs. Miln, 11 Peters, 139; Passenger's cases, 7 Howard, 457; Slaughter house cases, 16 Wall, 36-62; Butchers' Union Co. vs. Crescent City Co., 111 U. S., 743; Bowman vs. Railroad, 125 U. S., 465; Lawton vs. Steele, 152 U. S., 136; Reelfoot Lake, etc., vs. Dawson, 97 Tenn., 172, 100 Tenn., 491, 101 Tenn., 567; Cooley's Const. Lim., 5th Ed., 706; Black's Const. Law, Section 154.

The very language of Section 1, of the 14th Amendment to the U. S. Constitution implies that by "due process of law or the law of the land" property rights may be regulated and even taken. 103 Tenn., 421. It is earnestly insisted for the defendant in error that said Act is a good and wholesome law, general in its application and conflicts with no constitutional provision and should be so held by this Honorable Court.

Respectfully submitted,

BENJ. GORDEN McKENZIE,

Attorney for Defendant in Error.